Petition

81-2091

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No.

IN THE

Supreme Court of the United States

October Term, 1981

ROY D. WILT, SR. AND ROY D. WILT, JR., individually, and d/b/a **ROY WILT & SON** and **EVERETT BLATCHLEY** and **JEAN BLATCHLEY,**

Petitioners,

versus

AETNA INSURANCE COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

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QUESTION PRESENTED FOR REVIEW

Were Petitioners denied due process of law where an adverse judgment was entered without supporting evidence?

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OPINIONS BELOW

The Final Judgment entered in the Trial Court on the 23rd day of April, 1981, is set out at page 1-A of Appendix hereto. The Order Denying Rehearing, entered in the Trial Court on the 8th day of May, 1981, is set out at page 2-A of the Appendix hereto. The Per Curiam Order filed in the District Court of Appeal, Second District of Florida, appears at page 4-A of the Appendix hereto. (Where no explanatory Opinion is rendered by a Florida District Court of Appeal, it becomes the Court of final appellate jurisdiction. *Article 5, Section 3(b)(3), Florida Constitution)*

JURISDICTION

The jurisdiction of this Court is invoked pursuant to *Rule 17.1(c), Rules of the Supreme Court of the United States,* and *28 U.S.C. 1257(3).*

The Judgment sought to be reviewed, dated April 23, 1982, was entered in the Circuit Court of the Twentieth Judicial Circuit in and for the State of Florida on the 27th day of April, 1981. Rehearing was sought and by Order dated May 8, 1981, rendered May 11, 1981, was denied. Appeal was seasonably taken to the District Court of Appeal, Second District of Florida, which Appeal was

culminated in a Per Curiam Order, dated February 19, 1982, affirming the action of the Trial Court.

CONSTITUTIONAL PROVISIONS INVOLVED

This Petition involves the *Fourteenth Amendment* to the *Constitution of the United States*, the applicable portion of which provides:

> "No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; ... "

STATEMENT OF CASE

In April of 1980, Petitioner, Everett Blatchley, was operating a front-end loader in Lee County, Florida, when he was injured by a falling tree. Blatchley sued Petitioners, Wilt, for damages, alleging that he was an employee of Wilts, or, alternately, an independent contractor working for their benefit. Respondent, Aetna, defended by raising the issue of coverage, asserting that Wilts' liability policy did not provide coverage for Blatchley, claiming the latter was an employee of Wilts, not an independent contractor, hence no coverage existed.

By stipulation of counsel, the issue of coverage was the sole issue tried by the Court, without a jury, on March 26, 1981. The primary question which the Court addressed to resolve the coverage issue was whether Blatchley was an independent contractor or an employee of Wilts on the day he was injured.

The only witnesses to testify were Roy Wilt, Sr., Roy Wilt, Jr. and Blatchley. Mr. Wilt, Sr., at the outset of their relationship with Blatchley, advised the latter that, there being no Workmen's Compensation coverage, Blatchley would specifically have to be an independent contractor and make his own social security and income tax deduction arrangements. Blatchley confirmed that testimony.

Mr. Wilt, Jr., the sole owner of the business at the time of the accident, stated that Mr. Wilt, Sr., had no authority to hire an employee, corroborating Mr. Wilt, Sr.'s statement. Payroll records reflected that Blatchley was treated differently than employees of the business.

Blatchley had no specific pay schedule, but received compensation as each particular job was completed. The testimony reflected that Blatchley made his own work

decisions. He worked such hours as he might determine. His supervision was limited to an occasional visit to the job site by Mr. Wilt, Sr. Wilt, Jr. had never met Blatchley until the trial. Blatchley's "supervision" consisted of advising him of a job site and telling him how many loads of dirt were needed at that location. Finally, when Blatchley was injured and taken to the emergency room for treatment, he indicated on the hospital admission records that he was self-employed.

The evidence presented to the Trial Court showed that it was the purpose and intent of the Wilts and Blatchley that the latter perform certain tasks for the benefit of the former, not as an employee, but rather as an independent contractor. All of the indicia of their relationship supported that Blatchley was in fact an independent contractor, not an employee. No payroll deductions were made from Blatchley's pay. He was paid at irregular intervals, upon completion of a given job. No significant control was exercised by Wilts over Blatchley's labors, except to tell him what job to work on and how many loads to haul. Blatchley determined his own working days and hours, independent

of any supervision by Wilts. Blatchley worked other jobs besides the work he was doing for Wilts. By virtually every standard, Blatchley was not an employee, by rather, as all of said parties contended at trial, he was an independent contractor. All of the testimony, *which was unrebutted,* pointed to that fact. No contrary evidence was introduced!

The foregoing notwithstanding, the Trial Court opted to disregard the evidence and the applicable law. Indeed, in disregard of the intent of the parties, ignoring the evidence, and in defiance of the applicable law, the Trial Court entered its Final Judgment determining that Blatchley was in fact an employee of Wilts, not an independent contractor, and that the policy of insurance written by Aetna provided no coverage to Wilts in respect to Blatchley's injuries.

The Federal issues of due process of law, though admittedly not thus labeled, were first raised in the Trial Court in the Motions for Rehearing filed by Petitioners, challenging the sufficiency of the evidence. (Appendix, Pages 5-A—7-A) The sole point pursued on Appeal to the District Court of Appeal, Second District of Florida,

revolved about the absence of substantial competent evidence to support the Final Judgment.

WHY THE WRIT SHOULD ISSUE

Stated concisely, we respectfully urge that the Writ should issue here because the Trial Court ignored the evidence and applicable law and entered Judgment adverse to Petitioners. That act totally negated Petitioners' organic right to a fair trial and was in derogation of Fourteenth Amendment due process of law.

It has been held whether or not one has been accorded due process of law is tested by the fundamental fairness of the proceedings in the light of the total circumstances. *Buttny v. Smiley*, 281 F.Supp. 280, 288 (D. Col. 1968) Patently, no sophisticated analysis is necessary to arrive at the conclusion that fundamental fairness did not attend the proceedings sub judice! No evidentiary base whatsoever existed upon which the Trial Court could reasonably ground its decision here. Quite the contrary!

This Court, in *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970), promulgated a very basic

principle of law, saying:

> "The fundamental requisite of due process is the opportunity to be heard. ... The hearing must be ... *in a meaningful manner.*" (Emphasis supplied)
>
> *Boddie v. Connecticut*, 401 U.S. 371, 28 L.Ed.2d 113, 91 S.Ct. 780 (1971)

It is axiomatic that where one is accorded a hearing, but the evidence thus adduced is disregarded by the Court, such as is here the case, the litigant has not been *meaningfully* heard. It follows, he has been denied Fourteenth Amendment due process of law! The "trial" was thus a *brutem fulmen*, devoid of practical or legal efficacy.

This Tribunal has on plural occasions ruled that a judgment which is not supported by the evidence is a denial of due process of law. *United States ex rel Vatjauer v. Comissioner of Immigration*, 273 U.S. 103, 106, 71 L.Ed. 560, 47 S.Ct. 302 (1927); *Tot v. United States*, 319 U.S. 463, 87 L.Ed. 1519, 63 S.Ct. 1241 (1943); *Thompson v. Louisville*, 362 U.S. 199, 4 L.Ed.2d 654, 80 S.Ct. 624, 80 A.L.R.2d 1355, 1367 (1968). We urgently assert that the Judgment sub judice is not supported by any competent substantial evidence, hence constitutes denial of Fourteenth

Amendment due process. That point was clearly demonstrated in Petitioners' appellate efforts addressed to the District Court of Appeal, Second District of Florida. However, by its "Per Curiam" Opinion, that Court summarily affixed its imprimatur. The issue was thereby "swept under the rug" and Petitioners' efforts to have the matter resolved in the State Courts emasculated.

CONCLUSION

The odious Judgment sub judice was entered by the Trial Court, not *because* of the evidence, by rather *in spite of* the evidence. Such abuse of judicial prerogative by a State Court is patently State action which deprives Petitioner of property without due process of law, clearly within the proscription of the *Fourteenth Amendment* to the *United State Constitution.* The fundamental fairness which inheres in the concept of due process of law was unqualifiedly absent! The flagrant deprivation of Petitioners' federally guaranteed right to due process of law has been clearly shown. On those observations, argument and authorities, we respectfully submit that the Petition for Writ of Certiorari to the District Court of Appeal, Second District of Florida,

should be granted.

Respectfully submitted,

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Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Petition for Writ of Certiorari to the District Court of Appeal, Second District of Florida, have been mailed, postage prepaid, to William A. Donovan, Attorney for Respondent, at Suite 200, 1400 Gulf Shore Boulevard, North, Naples, Florida 33940, and that all parties required to be served have been served.

Dated this 7th day of May, 1982.

ROBERT E. PYLE

Appendix

APPENDIX

FINAL JUDGMENT

IN THE CIRCUIT COURT
OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

EVERETT BLATCHLEY and JEAN BLATCHLEY

Plaintiffs,

versus

ROY D. WILT, SR., and ROY D. WILT, JR., d/b/a ROY WILT & SON and AETNA INSURANCE COMPANY, a foreign corporation,

Defendants.

CASE NO. 80-2030-CA-HES

FINAL JUDGMENT

On March 25, 1981, upon stipulation of the parties hereto, this cause was tried before this Court on the issue of whether or not the Defendants Roy D. Wilt, Sr., and/or Roy D. Wilt, Jr., d/b/a Roy Wilt & Son, had insurance coverage with Defendant, Aetna Insurance Company, for the incident alleged in Plaintiff's Complaint. Having considered the evidence presented, the testimony given, and the argument of counsel, this Court finds as follows:

1. At the time of the incident alleged in Plaintiff's Complaint, Plaintiff Everett Blatchley was acting in an employee, rather than an independent contractor, capacity and was injured in the course and scope of his employment.

2. The policy of insurance written by Defendant, Aetna Insurance Company, provides no coverage to the Defendants, Roy D. Wilt, Sr., and/or Roy D. Wilt, Jr., d/b/a Roy Wilt & Son, for the incident alleged in Plaintiff's Complaint.

3. Plaintiff shall take nothing in this action from Defendant, Aetna Insurance Company. This Court reserves jurisdiction to tax costs.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 23rd day of April, 1981.

/s/ Hugh E. Starnes
CIRCUIT COURT JUDGE

ORDER DENYING REHEARING

IN THE CIRCUIT COURT
OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

EVERETT BLATCHLEY and JEAN BLATCHLEY,

Plaintiffs,

vs.

ROY D. WILT, SR., and ROY D. WILT, JR., d/b/a ROY WILT & SON and AETNA INSURANCE COMPANY, a foreign corporation,

Defendants.

CASE NO. 80-2030-CA-HES

ORDER

THIS CAUSE coming before this Honorable Court upon the Plaintiff's Motion for New Trial and/or Rehearing or in the Alternative Motion to Alter or Amend Judgment and Defendants, WILT's Motion for Rehearing and after hearing argument of counsel and the Court being fully advised in the premies (sic), it is thereby

ORDERED AND ADJUDGED that Plaintiffs and Defendants, WILT's Motions are hereby denied.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this 8th day of May, 1981.

/s/ Hugh E. Starnes
THE HONORABLE HUGH E. STARNES
CIRCUIT JUDGE

/s/ Hugh E. Starnes
THE HONORABLE HUGH E. STARNES
CIRCUIT JUDGE

OPINION FROM THE
DISTRICT COURT OF APPEAL
IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CASE NO. 81-1086

ROY D. WILT, SR., and ROY D. WILT, JR., d/b/a ROY WILT & SON and EVERETT BLATCHLEY and JEAN BLATCHLEY,

Appellants,

v.

AETNA INSURANCE COMPANY, a foreign corporation,

Appellee.

CASE NO. 81-1086

Opinion filed February 19, 1982.

Appeal from the Circuit Court for Lee County; Hugh E. Starnes, Judge.

PER CURIAM.

Affirmed.

SCHEB, C.J., and GRIMES and DAHANY, JJ., Concur.

EXCERPT FROM PETITIONER BLATCHLEY'S MOTION FOR NEW TRIAL

IN THE
CIRCUIT COURT OF
THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

EVERETT BLATCHLEY and JEAN BLATCHLEY,

Plaintiffs,

v.

ROY D. WILT, SR., and ROY D. WILT, JR., d/b/a ROY WILT & SON and AETNA INSURANCE COMPANY, a foreign corporation,

Defendants.

CASE NO. 80-2030-CA-RWP

Motion for New Trial, or in the Alternative Motion for Rehearing or in the Alternative Motion to Alter or Amend Judgment.

MOTION FOR NEW TRIAL

COMES NOW the Plaintiffs, EVERETT BLATCHLEY and JEAN BLATCHLEY, and move this Court for a Motion for New Trial, ... and in support would allege:

1. The Judgment is contrary to law.

a. There was no evidence presented, nor any witnesses who testified that EVERETT BLATCHLEY was an employee at the time of the accident.

* * *

EXCERPT FROM MOTION FOR REHEARING OF PETITIONERS WILT

IN THE CIRCUIT COURT OF
THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

CIVIL ACTION

EVERETT BLATCHLEY and JEAN BLATCHLEY,

Plaintiffs,

v.

ROY D. WILT, SR., and ROY D. WILT, JR., d/b/a ROY WILT & SON and AETNA INSURANCE COMPANY, a foreign corporation,

Defendants.

CASE NO. 80-2030-CA-HES

MOTION FOR RE-HEARING OF DEFENDANTS WILT

Defendants Roy D. Wilt, Sr., and Roy D. Wilt, Jr., hereby file their Motion for Re-Hearing of the trial held by this Court on the insurance coverage question herein and state:

1. The preponderance of the evidence presented to the Court in this matter reflects that both Plaintiff Blatchley and Defendants Wilt believed that their relationship was

one of independent contractor or contractor/sub-contractor, and not one of employer/employee. In such a situation, in the absence of substantial evidence to the contrary, which does not exist here, the Court should find in favor of the relationship as understood by the parties thereto. The intent of the parties is a significant factor in determination of such legal relationship.

* * *

Opposition

81-2091

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CLERK

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IN THE
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OCTOBER TERM, 1981

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Petitioners,

vs.

AETNA INSURANCE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second District of Florida

---

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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IN THE
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No. _____

IN THE
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OCTOBER TERM, 1981

ROY D. WILT, SR. and ROY D. WILT, JR., individually and d/b/a ROY WILT & SON, and EVERETT BLATCHLEY and JEAN BLATCHLEY,

Petitioners,

vs.

AETNA INSURANCE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second District of Florida

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

OPINION BELOW

The opinions below are set forth in Petitioners' Appendix, 1-A to 5-A.

JURISDICTION

The judgment of the District Court of Appeal of the State of Florida, Second District, was entered on February 19, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the Constitution of the United States.

STATEMENT OF THE CASE

In April of 1980, Everett Blatchley was injured while operating a front-end loader in Lee County, Florida. Blatchley then sued the Wilts, father and son, in their individual capacities and doing business as Roy Wilt & Son, alleging that he was an employee, and that the Wilts had failed to furnish him a safe place to work. Alternatively,

Blatchley alleged that he was an independent contractor to whom the Wilts owed a duty to furnish a safe place to work. Respondent, Aetna Insurance Company, provided general liability coverage to the Wilts, but the policy excluded any coverage for employees of the Wilts, as such a policy was not intended to provide workers' compensation coverage.

By stipulation of counsel, the coverage issue was tried by the court in a non-jury proceeding on March 26, 1981. The primary issue was the legal status of Blatchley, i.e., whether he was an "employee" or an "independent contractor."

Roy Wilt, Sr., testified that when Blatchley approached him for a job, he informed Blatchley that he could only take him on as a subcontractor,

as he (Wilt) had no workers' compensation insurance. (A-1). Blatchley was then "hired" to load and haul fill dirt for the Wilts. He was paid five dollars per hour for his work and determined his own working hours. Wilt, Sr. testified that he exercised little supervisory control over Blatchley, except to tell him how many loads were to be hauled and the location of the delivery site. However, on cross-examination, he admitted that he had instructed Blatchley to refrain from pulling down any trees at the job site, (A-2-3), and that Blatchley did not need any detailed instruction as to how to perform the job, since he already knew how to perform the job.(A-1-2). Furthermore, Wilt, Sr. visited the job site from time to time. All the equipment, maintenance and repair for the machinery

involved was furnished to Blatchley by the Wilts. Wilt, Sr. further admitted that if Blatchley was too slow in performing the work, he would terminate him, (A-3-4), although he later withdrew the statement, saying that he had no authority to fire personnel.

Wilt, Jr. likewise testified that Blatchley was hired as a subcontractor because the Wilts had no insurance for employees. No deductions for withholding tax or social security were made from Blatchley's checks. Regular employees of the Wilts, on the other hand, had such deductions taken out of their checks. However, Wilt, Jr. also admitted that another "subcontractor" was paid differently from Blatchley by being paid on a commission basis. (Blatchley was paid by the hour.)

Blatchley basically confirmed the Wilts' testimony. However, although he denied that he was given instructions as to the manner in which he was to perform the job, Blatchley's deposition testimony was introduced wherein he stated that Wilt, Sr. would come to the job site and show him how to perform certain tasks. Blatchley denied his deposition testimony. (A-6). Blatchley also admitted that the "subcontract" was not for any set length of time, and that Blatchley believed that Wilt could terminate him if he wanted to.

The trial court ruled that Blatchley was in fact an employee of the Wilts, and both Blatchley and the Wilts appealed that finding to the Florida District Court of Appeal. All appellants argued that the judgment was not supported by competent substantial evidence.

However, the appellate court affirmed the lower court's decision per curiam.

SUMMARY OF ARGUMENT

As this Court has recognized, where a state court has determined during the course of regular proceedings that there is sufficient evidence to support the rendition of a judgment, the contention that the decision is erroneous does not rise to a federal constitutional question. Both the trial court and the state appellate court determined that sufficient evidence existed to support the trial court's judgment, and thus there is no merit to Petitioners' contention that they have been denied due process of law under the Fourteenth Amendment.

ARGUMENT

NO DUE PROCESS ISSUE IS RAISED UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES WHERE BOTH THE STATE TRIAL AND APPELLATE COURTS HAVE DETERMINED THAT THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE JUDGMENT OF THE TRIAL COURT.

Basically, Petitioners come before this Court arguing they have been denied due process of law because the judgment was rendered without there being a sufficient evidentiary basis therefor. Respondent will show that Petitioners' argument is not well taken as: (1) there is no denial of due process even if judicial error is committed; and (2) there was sufficient competent evidence to support the judgment.

Petitioners allege that the rendition of a judgment not supported by

the evidence constitutes a denial of due process, citing *Thompson v. City of Louisville*, 362 U.S. 199 (1960), and *United States ex rel. Vatjauer v. Commissioner of Immigration*, 273 U.S. 103 (1927). However, this Court has firmly established the principle that the Fourteenth Amendment is not a guarantee that trial proceedings shall be free from error. *Roberts v. New York City*, 295 U.S. 264 (1935). In *Bell Telephone Co. of Pennsylvania v. Pennsylvania Public Utility Commission*, 309 U.S. 30 (1940), Bell appealed a final judgment, arguing that the decision was arbitrary and a denial of due process because it was not supported by the evidence. This Court held that:

> As to the first contention, it appears that the state court heard the appeal judicially and decided that there was evidence justifying the finding of the Commission of unreasonable

> discrimination in the transaction of its intrastate business. In the absence of other constitutional objections, *it cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs.* The contention that such a decision is erroneous does not present a federal question.

309 U.S. at 32 (emphasis supplied).

In the instant case, the state appellate court likewise decided that there was sufficient evidence to uphold the judgment (and the proceedings involved a question of state law). Thus, it cannot be said that any denial of due process was involved. Although Petitioners urge that the trial and appellate courts disregarded the law, they have cited no cases to support their theory that Blatchley can only be an independent contractor, nor have they cited to the record to show that the trial judge

exhibited any prejudice or bias toward Petitioners. The conclusion is manifest that Petitioners were afforded a full and "meaningful" trial, in accordance with the principles of due process. Even assuming *arguendo* the correctness of Petitioners' argument, the record shows that there was competent substantial evidence to support the trial judge's conclusion that Blatchley was an employee.

It is well established in Florida law that there is no absolute rule for determining whether one is an "employee" or "independent contractor"; each case must be determined upon its own facts. *Magarian v. Southern Fruit Distributors*, 146 Fla. 773, 1 So. 2d 858 (1941); *Cawthon v. Phillips Co.*, 124 So. 2d 517 (Fla. 2d DCA 1960). A variety of different indicia, however, are recognized by the Florida courts as useful in determining

one's status, although no single factor is, by itself, controlling. *See, Magarian v. Southern Fruit Distributors, supra.* The test utilized by the Florida supreme court is taken from the Restatement of Agency, and includes: the right of control that the alleged master exercises; whether the employer supplies the tools for the job; the method of payment (whether by time or by the job); the length of time of employment; the parties' belief as to the relationship they are creating; and whether the work is a part of the regular business of the master. *Cantor v. Cochran,* 184 So. 2d 173 (Fla. 1966). The right to control is the primary factor in making such a determination, *Brewer v. Cueto,* 379 So. 2d 1322 (Fla. 1st DCA 1980), although it is the *inherent* authority to control, not the *actual* control

exercised which is determinative. *Farmers & Merchants Bank v. Vocelle*, 106 So. 2d 92 (Fla. 1st DCA 1958). Furthermore, an absolute right to terminate the relationship is inconsistent with the concept of an independent contractor, who has the legal right to complete the project contracted for or sue for breach of contract. *Brewer v. Cueto, supra; Lindsey v. Willis*, 101 So. 2d 422 (Fla. 1st DCA 1958).

Tested by the standards enunciated in Florida case law, it is clear from a review of the record that there is competent substantial evidence to support the verdict. Wilt, Sr. admitted that he had given instructions to Blatchley. Although he denied it at trial, Blatchley gave deposition testimony admitting that he received instructions from Wilt. Wilt, although he contradicted himself,

stated that he could fire Blatchley if he wanted to, and Blatchley confirmed this. This evidence is sufficient to support the inference that there was no independent contract between the Wilts and Blatchley for a specific job, but rather an informal employment arrangement analogous to a day laborer. Wilt had the power to fire Blatchley; Blatchley was paid by the hour; Wilt furnished all equipment; and Blatchley was engaged in the regular business of Wilt.

Furthermore, although the parties may have believed that they were creating a contractor status, the name the parties affix to the relationship is not conclusive. *Cantor v. Cochran, supra; Justice v. Bedford Trucking Co.*, 272 So. 2d 130 (Fla. 1972). Whether one is in fact an employee or contractor depends upon all the circumstances of his dealings

with the other party. *Id.*

Here, the Wilts testified that the only reason they denominated Blatchley an independent contractor was to avoid the requirement of workers' compensation insurance. The trial judge could and did find that the denomination of Blatchley as a contractor was a mere subterfuge, and the dealings of the parties were more consistent with an employment rather than a contractor relationship. *Cantor v. Cochran, supra; Justice v. Bedford Trucking Co., supra.*

Thus, although there was evidence tending to prove either relationship, it cannot be said that there was a complete lack of *any* supportive evidence, as Petitioners assert. (The cases Petitioners cite stand for the proposition that the record must be *devoid* of any supportive evidence in order for a due

process issue to be involved.) It is apparent from the record that Petitioners were afforded the full procedural and substantive due process rights guaranteed by the Fourteenth Amendment.

CONCLUSION

The finding that there is competent substantial evidence to support a judgment does not rise to a constitutional denial of due process. Even if such were true, a mere superficial reading of the record reveals evidence that would support the instant judgment. The petition for certiorari should therefore be denied.

Respectfully submitted,

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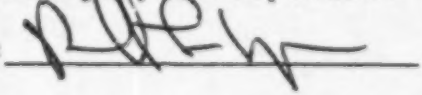
By: 

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Brief In Opposition to Petition for Certiorari were mailed, postage prepaid, to Robert E. Pyle, Attorney for Petitioners, P.O. Box 557, Lake Alfred, Florida 33850, this 23 day of June, 1982.

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Appendix

APPENDIX

APPENDIX A

EXCERPTS FROM TRANSCRIPT OF TRIAL PROCEEDINGS, MARCH 26, 1981, BEFORE THE HONORABLE HUGH E. STARNES.

TESTIMONY OF ROY WILT, SR.

EXCERPT 1 (Transcript of Proceedings, at 12):

Q And what happened at that time?

A Well, we talked about the job and he was wanting work, and I told him that I needed a man, but the only way that I would hire him was as a sub-contractor, that we didn't carry any workmen's compensation.

EXCERPT 2 (Transcript of Proceedings, at 19):

Q And you would tell Mr. Blatch-ley what you wanted done, is that correct?

A No, sir; he already knew.

A So you never told him any of the details on how to do the work or what needed to be done?

A No, sir.

Q Do you remember my taking your deposition dated the 25th day of September, 1980, sir?

A Yes, sir.

Q And on page 19 of that deposition I was asking you whether or not you had given him any particular instructions on how to do the work. And you stated--I'm referring now to line 12. The question was,

"What did you observe when you went back there?"

Your answer, line 13,

"I observed the pine tree that he was under orders not to push any pine trees whatsoever."

Do you recall giving me that answer, sir?

A That was an order when he started to working there.

Q Okay. So you did give him instructions, then, on how and what work to do, is that correct?

A On what work to do.

EXCERPT 3 (Transcript of Proceedings, at 22):

Q Mr. Wilt, if you went out to a job site where Mr. Blatchley was working for you and you observed him doing something that you disapproved of, you would fire him, wouldn't you? You were his boss, weren't you?

A Yes, sir. I can terminate his contract.

Q At any point in time that you so chose, couldn't you?

A Yes, sir; I think so.

EXCERPT 4 (Transcript of Proceedings, at 29):

Q ... Let's say that on a load of dirt you were going to get paid fifty dollars for hauling a load of dirt. Let's say it took Mr. Blatchley a whole lot longer than that to haul that and you were losing money. You would probably terminate him, wouldn't you?

A No, sir.

Q No? What if he did it consistently?

A Yes, sir.

APPENDIX B

EXCERPTS FROM TRANSCRIPT OF TRIAL PROCEEDINGS, MARCH 26, 1981, BEFORE THE HONORABLE HUGH E. STARNES.

TESTIMONY OF EVERETT BLATCHLEY

EXCERPT 5 (Transcript of Proceedings, at 65):

Q I would like to refer you to page 10 of the deposition, line 18. I asked you:

"While you were working for Mr. Wilt, did he tell you how to do your work or is this something you took upon yourself, you knew what to do? How did that work?"

And your answer was:

"Well, if anything come up he showed me how to do it a better way. Like on the front end loader he's show me a better way to do it."

Do you recall that answer?

A I answered it too fast.

MR. ZELMAN: Would you read the rest of the answer?

BY MR. DONOVAN: (Cont'g.)

Q "And that's all."

Do you recall that answer?

A I answered it too fast. I recall.

Q Okay. So Mr. Wilt did come down to the job site sometimes and tell you what to do and show you how to do things, didn't he?

A No.

Q So you're disagreeing with what you said in your deposition?

A Yes, sir.

EXCERPT 6 (Transcript of Proceedings, at 67):

Q Mr. Blatchley, if Mr. Wilt wanted to fire you, he would have been

able to, wouldn't he?

A I presume so, yes.